

Response to correspondence from Liz O'Sullivan. Comment letter dated 27 July 2010.

Ms. O'Sullivan indicates that a number of issues require further analysis and resolution: project impacts on the endangered Sierra bighorn sheep herd, impacts to the Round Valley mule deer herd, traffic congestion, the incompatibility of proposed equestrian uses with the larger Paradise community, project impacts on the historic irrigation canal, the lack of access to Rock Creek, and increased PM-2.5 pollution from fire rings. Each of these concerns is addressed below.

Sierra Bighorn Sheep

As indicated in the response to similar concerns expressed by Gail Hays in Comment Letter #17, Sierra Nevada bighorn sheep have not been reported in the vicinity of the proposed project, and the closest known occurrence of bighorn is approximately 5 miles southwest of the project site (CNDDDB 2010).¹

In 2008, the USFWS designated Critical Habitat for Sierra Nevada bighorn sheep (USFWS 2008).² The project site is not encompassed by the Wheeler Ridge Sierra Nevada bighorn sheep Critical Habitat Unit, and at the closest point the project site is still approximately 4 miles west of the Critical Habitat Unit boundary (USFWS 2008). The proposed project is not expected to impact Sierra Nevada bighorn sheep.

Round Valley Deer Herd

As discussed in the response to Al and Patti Heinrich (Comment Letter #6), the proposed project site was previously used as a recreational resort and camp that included a restaurant/lodge, 22 cabins, an RV park with 19 sites, and mobile home sites. The resort began operation in 1916, and continued in active use until 2007 when the property was acquired by the project proponent. The restaurant had seating for at least 25 people and was generally full in the evenings. During the years 1979-1985 there were monthly parties with close to 300 attendees and an annual New Years party with outside lighting and over 500 attendees (based on 9/20/2010 communication with Donna Mason, 1979-1985 Paradise Resort owner). The resort was used for overnight use, camping, hiking, fishing, swimming and dining. An estimated 50-100 people used the area for fishing on weekends, and even during midwinter the resort was generally half full. Moreover, the area continues to be used for various types of recreation since the resort closed in 2007.

Given this established and long-term pattern, it is expected that deer and other wildlife in the region have become habituated to human activity (including lights, noise, fishing, swimming and other recreation, automobiles and bicycles, and other activities) over the past 78 years along Rock Creek in the vicinity of the proposed project site. The level of human activity at the proposed 13 residences, 2 secondary units and trail access parking area is not expected to represent an increase over past use, and thus the human activity at the proposed project is not expected to significantly affect deer use of the project site.

The DEIR identifies the loss of approximately 10 acres of habitat due to development of the project. As discussed therein, the 10-acre loss was a worst case estimate based on the original plan which was subsequently modified to incorporate fewer lots and more open space.³ Furthermore, the 10-acre estimate included all onsite scrub species that comprise a mix of High Desert Blackbush Scrub, Big Sagebrush Scrub, and Black Locust Woodland.

In response to comments offered during the Draft EIR review period, the direct impact to High Desert Blackbush Scrub and Big Sagebrush Scrub habitats (the two habitats that contain bitterbrush [*Purshia tridentate*]) has been calculated for the revised plan and will represent an actual loss of approximately 2.2 acres.

¹ Calif. Dept of Fish & Game (DFG). 2010. RareFind 2 personal computer program. Data Base Record Search for Information on Sierra Nevada bighorn sheep in Mono County. DFG, California Resources Agency. Sacramento, California.

² U.S. Fish & Wildlife Service, 2008. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (*Ovis canadensis sierrae*) and Taxonomic Revision. Fed. Register Vol. 73, No. 151, 8/5/08.

³ The original plan proposed 14 primary units and 3 secondary units; subsequent revisions reduced the number of primary units to 13, and the number of secondary units to 2, and the northernmost 5.7-acre lot was designated as permanent public open space on the tentative map.

As noted above, the roughly 2.2-acres of High Desert Blackbush Scrub and Big Sagebrush Scrub habitats that would be impacted by this project have been subject to human activity from an active resort for nearly 100-years. There are extensive areas of habitat in the region: wintering deer use approximately 22,000 acres of habitat in Round Valley (Pierce *et al* 2000; note that the 22,000-acre habitat estimate is approximately 15% larger in area than the 30 square mile habitat area indicated by Ms. O'Sullivan). Habitat area is related to the herd size, however, and the habitat area would like vary over time. Most of the deer habitat in the region is in public ownership in large blocks of undeveloped land. The loss of deer habitat due to the project would be approximately 0.01% of the deer habitat in Round Valley. The DEIR also identified that the Round Valley deer herd was estimated to be approximately 2,500 deer in 2006. Weather conditions are a major factor influencing deer populations: the decline in Round Valley deer herd numbers between 1985 and 1991 corresponded with a severe drought and a subsequent reduction in forage availability (Pierce *et al* 2000). Again recognizing that the project would result in the loss of approximately 2.2 acres of deer habitat, and recognizing that the project site has been in active use for over 90 years, the proposed project is expected to have only a minor affect on deer populations in the region.

Impacts on the deer herd associated with traffic are also expected to be similar to long-term patterns. Based on conservative factors associated with an original plan that was subsequently modified with fewer units,⁴ the DEIR traffic analysis estimated that the project would result in 124 total trips per 24 hour period on Lower Rock Creek Road: with 11 trips during the morning peak hour and 15 trips during the evening peak hour. The remaining trips would occur throughout the other 22 hours. The traffic analysis also indicated that there are currently approximately 119 trips during the morning peak hour and 136 trips during the evening peak hour on Lower Rock Creek Road (DEIR Appendix M Figure 1 *Existing Traffic Volumes*).

Activities associated with the former Paradise Resort provide a context for assessing these traffic demands. The resort included a restaurant/lodge that was generally full year round with seating for 25 people or more, along with 22 cabins, an RV park with 19 sites, and mobile home sites. An estimated 50-100 people used the area for fishing on weekends, and even during midwinter the resort was generally half full. The project-related traffic demands would not be substantively greater (and may be lower) than demands associated with the former resort.

As noted in the DEIR, weather conditions are a major factor influencing deer populations. The decline in Round Valley deer herd numbers between 1985 and 1991 corresponded with a severe drought and a subsequent reduction in forage availability (Pierce *et al* 2000). The Round Valley mule deer herd population later rebounded and was estimated to comprise 2,500 deer in 2006 (when the resort was still in operation). Because there would be approximately 2.2 acres of deer habitat loss and the project site has been in active use for over 90 years, the proposed project is expected to have only a minor effect on deer populations in the region.

With respect to the recommended deer mitigation measures, a reduction in the number of residences on this site from 14 to 8 would have no bearing on project impacts to the Round Valley mule deer herd (as discussed in the Draft EIR and this Final EIR), and the suggested contribution to a fund for the construction of deer fencing or a deer undercrossing is considered infeasible. Caltrans keeps track of the locations where deer collisions occur, and Sonora Junction (where Highways 395 and 108 meet, north of Bridgeport) has more deer collisions than the rest of Mono County combined. Sherwin Grade, Highway 395 by Mammoth Creek, and Round Valley (where deer forage) are also areas with high collision rates.⁵ Caltrans has programs in other areas that are designed to minimize deer collisions. In Siskiyou County, for example, Caltrans recently funded a program with cameras, interconnecting radar sensors and signs that trigger warning lights on the highway when deer or other large animals cross the path of a radar beam. However, there is no corresponding Caltrans program in Mono County. Fencing on private land would be an effective alternative only if a continuous stretch of adjoining the Caltrans right-of-way could be assembled and there is no mechanism to coordinate, fund or construct such an alternative. In the absence of any established program or implementation mechanism, this concept is infeasible as a measure for the Rock Creek Canyon project.

As noted above, the project is not expected to result in human use levels above historic patterns, and the net loss of High Desert Blackbush Scrub and Big Sagebrush Scrub habitats has been reduced to 2.2 acres as a result of project modifications. The use levels associated with the proposed project are lower than the use levels that would be permitted under the existing adopted General Plan, which designates the site for Rural Resort land uses. As discussed in DEIR Section 5.6 (Land Use) and Section 7 (Alternatives), the existing adopted General Plan (and accompanying environmental assessments) would allow lodging facilities up to 40 units per acre, plus up to 17 recreational vehicle spaces per acre, adult-oriented businesses provided such uses are at least 500-feet from any residence); with a use permit, the existing designation would also allow hotels and motels, transient rentals, commercial recreation and other uses.

⁴ The original plan proposed 14 primary units and 3 secondary units; subsequent revisions reduced the number of primary units to 13, and the number of secondary units to 2, and the northernmost 5.7-acre lot was designated as permanent public open space on the tentative map.

⁵ Sierra Wave, 6 October 2010; based on 'Deer Crossing Time' article written by Tom Woods, 8 October 2007.

The General Plan EIR acknowledged the significant cumulative impacts associated with implementation of the designated land uses, and concluded that interagency planning and policy development constituted mitigation for the potentially significant cumulative effects of General Plan development. The County has honored this mitigation commitment through a number of programs including joint support with Caltrans for the acquisition and construction of a deer underpass at Sonora Junction, acquisition of Conway Ranch for deer habitat value, and other programs. These regional programs, funded and/or supported by Mono County, serve to mitigate to the lowest feasible level the impacts of General Plan development (including Rock Creek Canyon) on deer populations in Mono County. Imposition of a mitigation fee remains available in the future as another measure to offset deer impacts, but would be enforceable for individual project applications only after a formal fee program is in place and supported by appropriate studies, findings and hearings. It is not feasible as a mitigation measure for the current project because there is no basis for assigning a proportional share of cost to this project, and therefore no way to ensure that the fee has a demonstrable nexus to the impacts of the Rock Creek Canyon project. Furthermore, the process to create such a program cannot be accomplished within a reasonable period of time for the purposes of this project. The County has not taken steps toward adoption of a fee program, but has affirmed its intent to continue working with Caltrans and other agencies to implement projects that protect the deer herd and associated habitat.

Roadway Congestion

Concerns about roadway safety were an important consideration in the CEQA analysis, and were also raised in the comment letter from Gary and Pat Gunsolley (see Letter #7). As noted in that response, the possibility of relocating the entrance to Lots 1-6 was identified as a potential alternative if conditions warranted, as was the possibility of installing a traffic signal at the project entry to Lots 1-6.

The project is expected to generate 134 daily trips, of which 58 would be generated by lots 1-6. Five of the 58 trips would occur during the peak am hours (1 entering the site and 4 exiting), and 6 would occur during peak pm hours (4 entering and 2 exiting). These are conservative estimates based on urban trip generation factors and it is expected that actual rates at this site would be much lower. Given these estimated demands, the project traffic engineer met at the site with the Public Works Department in May of 2009 to assess conditions and required improvements. During the meeting, it was determined that a series of measures would be required to achieve acceptable safety standards at the bend in Lower Rock Creek Road. As outlined in the Mitigation Program (§3 of this Final EIR) improvements include:

- ▶ Replace existing W13-1 (20 MPH) ADVISORY SPEED signs with new W13-1 (15 MPH) signs for both traffic directions on Lower Rock Creek Road. Supplement the curve warning signs with solar energized yellow flashers. The signs are flashers that would further slow down traffic that is approaching roadway curves.
- ▶ Replace the existing faded W11-2 (PED XING) sign with a new high-intensity reflective sign.
- ▶ Install W1-8 (CHEVRON) type, curve-warning signs for both traffic directions on Lower Rock Creek Road.
- ▶ Install an R-1-1 STOP sign at each of the three existing project access entrances.
- ▶ Across from the restaurant, install one street light on the parking lot for improved night-time visibility.
- ▶ Trim, or remove, tree branches/vegetation on each side of the project access entrances to improve the visibility for Lower Rock Creek Road traffic that is approaching the roadway curves.

It was determined by the County and the project traffic engineer that these improvements would provide an acceptable level of public safety. With these improvements, it was determined by the County and the project traffic engineer that an acceptable level of public safety would be achieved and potential hazards would be less than significant. As a result, the potential option of relocating the access to lots 1-6 (which would have required a stream crossing) and the potential option of installing a traffic signal (which has the unique hazard of creating a false security) were not necessary to reduce impacts to a less-than-significant level.

Equestrian Facilities

As noted in the response to Comment Letter #7, this concern was raised by several reviewers of the Draft EIR. In light of the Draft EIR comment letters, the applicant has asked that this provision be withdrawn, and the Specific Plan has been revised accordingly (please see the amended Specific Plan provided as §5 of this Final EIR).

Round Valley Irrigation Canal

The drainage ditch noted by Ms. O'Sullivan was also referenced in the comments received from Gail Hays (see Comment Letter #17). Ms. Hays notes the potential historic value of this ditch and recommends its preservation. In response to her letter, the project archaeologist conducted a survey of the ditch during August 2010. A full report of his findings is provided in Attachment 2 to this Final EIR, and results are summarized below.

There are three ditches and a pipeline water system on the southern Rock Creek Canyon parcel (the locations of these ditches are shown on Map 1 in Attachment 2). Ditch 1 traverses lots 4, 5, and 6, and then empties back into Rock Creek. This ditch is associated with the Paradise Resort, and was previously considered and mitigated. Ditch 2 is a buried pipeline that carries water from Rock Creek to Round Valley, and is still in use. The association of this

water system with water rights that predate LADWP acquisition of water rights in the valley is indeed historic. However, the material remains of it within the project area are not.

Ditch 3 is evident below Rock Creek Road southwest of Paradise Lodge and on the west side of Lots 4, 5 and 6. Located below the road fill and about 3 feet wide from cut to berm, this ditch drops 9.5 feet over a distance of 275 feet, after which it disappears. Ditch 3 is earthen, unlined, and there is no trace of it north of Rock Creek Road. At first glance, Ditch 3 appears to be an extension of Ditch 4 but careful mapping indicates that the two ditches did not connect. Ditch 3 appears to be a drainage feature of Rock Creek Road, designed to protect the motel cabins from road runoff. It is not considered a significant historic resource.

Ditch 4 clearly predates Rock Creek Road, since the section on the slope below the road and to the west of Lot 4 was buried by road fill. Within the project area Ditch 4 is a filled-in earthen ditch, with a rock retaining wall on the downhill side. Constructed in cut-and-fill on the hill slope above the Rock Creek terrace, the ditch appears to have been 4-5 feet wide. Sloping very gradually from north to south, Ditch 4 skirts the west edge of Lots 1, 2, and 3 of the Rock Creek Canyon property for 450 feet, and continues south and west 900 ft to an unnamed tributary of Rock Creek. There it ends, evidently once used for irrigation of a gently sloping area below the ditch and above the ruins of a rock house. The land that Ditch 4 serves, including the ruins of the rock house, was a 160-acre Homestead Entry Patent dated October 1900, by Catherine Sherwin. The homestead was also part of a Desert Land Entry patent application dated June 4, 1879 and canceled in May of 1885. The ditch in its entirety has been recorded as an archaeological site. The portion of Ditch 4 on LADWP land, to the south of the Rock Creek Canyon property, appears to be largely intact and is visible as a shallow ditch with a low berm and rocks on the downhill side, although it is no longer functioning. The portion of Ditch 4 in the project area has been substantially modified: the northern portion was buried by the construction of the Rock Creek Road, and the southern portion has been converted to a trail by landowners to the west. The rock retaining wall has been breached in several places, and recently built up and modified in others. No development is planned along the ditch alignment, and this feature would not be affected by the project.

In summary, no historic resources would be affected by the proposed project. Ditches 1, 2, and 3 are not considered significant historic resources. Ditch 4 is a historic resource, although the portion of the ditch within the project area may not retain sufficient integrity to be considered significant under CEQA. Current project plans would not affect Ditch 4. However, the Ditch 4 is very close to the property boundary, and could be subject to additional modifications if future homeowners built fences or retaining walls along the boundary. To preclude the possibility of future modifications, project plans have been modified to include a conservation easement along the Ditch 4 alignment. This provision is addressed in a new Mitigation Measure CUL 5.5-3 as shown below and contained in the final mitigation program (see Final EIR Section 3):

MITIGATION CUL 5.5-3 (Conservation Easement): *The Tentative Parcel Map and Specific Plan shall incorporate a conservation easement along the full length of the Ditch 4 alignment within the project area.*

The location of the Ditch 4 conservation easement will facilitate avoidance of the relocated *Muilla coronata* plant community. Easement boundaries will be communicated to the biologist that performs the trial and final transplanting, as provided in Mitigation Measure BOT 5.3-1b that was previously modified in response to Comment Letter #9 (from the Department of Fish and Game).

In conformance with the mitigation measure requirements noted above, §3.6.6 of the Specific Plan (Open Space Development Standards) has been amended to incorporate a new subsection (f) that requires a conservation easement along this historic ditch. The modified text is shown below and included with the final Specific Plan as presented in Section 5 of this Final EIR.

"3.6.6 OPEN SPACE DEVELOPMENT STANDARDS

- a. Trail Access:** *To facilitate public use of Lower Rock Creek Trail, a permanent trailhead access easement shall be provided. The private access route for Lots 8-12 shall serve as the trailhead access easement, linking the dedicated trailhead parking lot with the BLM lands to the north. The road will be paved and maintained only to the end of the cul-de-sac.*
- b. Trailhead Parking and Signage:** *In addition to the paved public trail access road, a public parking area shall be provided on Lot A, located directly west of Lot 8. This public parking area will be offered for dedication to the County but maintained by the HOA for use by trail users, project residents who participate in ride-share programs, and public agencies taking access to area facilities. Trail access signage shall be provided. Access to Lot 7 shall be taken from the north end of this trailhead parking lot.*
- c. Parking Restrictions:** *Because Lower Rock Creek Road has limited line-of-sight in the project area, 'no parking' signs will be posted along the remaining road right-of-way that adjoins the project boundaries (see Specific Plan §3.6.8.1(b) for additional discussion of these restrictions).*
- d. Creek Access:** *Lower Rock Creek has not been adjudicated to be a navigable waterway and, until it is so adjudicated, public in-stream navigation and related incidental uses shall not be permitted by the*

landowner. If Lower Rock Creek is found to be a navigable waterway, public in-stream navigation shall be permitted, up to the high water mark of the river, in accordance with applicable state and federal laws.

- e. **Motorized Vehicles:** *Apart from vehicles owned by project residents and vehicles used by authorized public agencies, no motorized vehicles or parking shall be permitted on private roads within Rock Creek Canyon.*
- f. **Historic Ditch Conservation Easement:** *A conservation easement shall be maintained in perpetuity along the alignment of the ditch located on the western hill slope above the Rock Creek Terrace and skirting the western edge of Lots 1, 2 and 3 of the Rock Creek Parcel Map."*

The revised sheet of the Tentative Tract Map showing the conservation easement on parcels 1-6 was provided in the response to Gail Hays (Comment Letter #17).

As an added note, Mr. Mike O'Sullivan contacted the County to indicate that this historic feature extends well beyond the Rock Creek Canyon project area, perhaps up to 3 miles to the south. Though it is discontinuous with several obliterated stretches, Mr. O'Sullivan indicates that there is at least one segment that still has original pipeworks intact. The County has stated its intent to work with Inyo County to compile information about the full extent of the historic Round Valley irrigation canal. Information will be transmitted to the County of San Bernardino Archaeological Information Center to ensure that the feature is fully documented and considered as future land use activities are proposed in this region.

PM-2.5 Pollution from Fire Rings

Recreational fires do emit harmful air pollutants, but the question of impact must be considered within the context of the quantity of such emissions, the background levels of a given air pollutant, and the dispersive capacity of the airshed. Ultra-fine particulate matter (called PM-2.5) levels in communities such as Mammoth Lakes or Bishop can become dangerously high in winter when hundreds or more indoor fireplaces or wood stoves are burning on cold nights under powerful atmospheric inversion conditions. However, the Sierra Paradise community does not have enough population to generate elevated background PM-2.5 levels, and the proposed outdoor fire rings would not generally be in use on cold winter nights, nor would all 14 normally be in simultaneous use on non-winter evenings. The Specific Plan has been modified to include standards for the construction and use of these features. Specific Plan §3.6.5 (j) has been revised as shown below using 'Track Changes' to depict deleted and added text.

"j. Recreational Amenities:

- i. *Recreational amenities including decks, arbors, gardens, BBQ facilities, athletic areas, game fields and other similar facilities shall be permitted within the building envelope for each lot, provided such amenities comply with applicable agency codes and regulations. Recreational amenities that do not involve impervious surfaces are also permitted within designated disturbance areas.*
- ii. *Fire rings shall be permitted as recreational amenities within the building envelope for each lot subject to provisions in this section. No fire ring may exceed an outside diameter of 6 feet. Only wood may be burned in the fire ring. The burning of plastic materials, garbage, green wastes, hazardous materials and any materials other than wood shall be prohibited. The fire ring must be made of solid construction materials. The fire ring must be separated by a minimum distance of 20-feet from combustible materials (including overhanging trees) and from the canyon walls of Lower Rock Creek."*

Access to Rock Creek

If the project is approved, fishing and swimming and other uses would not be permitted on any part of the stream that crosses private lots within Rock Creek Canyon and there are no trails provided within the plan that would provide direct creek access to local residents. However, public stream access and recreational use would continue to be available on public lands south and north of the site, and the project proposal includes a public access easement and trail to provide linkage between the Trailhead Parking Lot and the 5.7-acre Open Space remainder parcel.

This open space remainder parcel is and will remain accessible to residents of Sierra Paradise via an existing 20-foot easement for the water line alignment. This easement extends from the existing creek hiking trail up to Glenn Court on the west, and will also link to Rock Creek Ranch on the east to provide trail access for future residents of that project. The easement, which will be co-designated for trail use as part of the proposed project, will ensure that residents of Paradise have a pedestrian-friendly route by which to access Rock Creek.

The Specific Plan Section 3.6.6 has been modified to incorporate this trail as an open space feature. The added text is shown below using 'Track Changes' to depict deleted and added text.

- g. *Pedestrian Trail: To provide pedestrian access to Lower Rock Creek for Paradise residents, a constructed trail shall be provided from Glenn Court down to Rock Creek at the 5.7-acre open space remainder parcel. The trail shall continue up to the Rock Creek Ranch project.*